

### **REMARKS / ARGUMENTS**

The present application includes pending claims 29-53, all of which have been rejected. Claims 36, 49 and 52 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 29-35, 37-51 and 53 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over USP 5,894,471 ("Miyagi"). The Applicant respectfully traverses these rejections at least for the reasons previously set forth during prosecution and at least based on the following remarks.

### **REJECTION UNDER 35 U.S.C. § 103**

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure, Rev. 6, Sep. 2007 ("MPEP") states the following:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

See the MPEP at § 2142, citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), and *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d at 1396

(quoting Federal Circuit statement with approval). Further, MPEP § 2143.01 states that “the mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art” (citing *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007)). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness.

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142. Further “[t]o establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).” See MPEP at § 2143.03. Additionally, “[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.’ In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA).” See *id.*

With these principals in mind, Applicant turns to the claim rejections.

**I. Miyagi Does Not Render Claims 29-35, 37-51 and 53 Unpatentable**

**A. Independent Claims 29, 37 and 45**

With regard to the rejection of independent claim 29 under 35 U.S.C. § 103(a), the Applicant submits that Miyagi does not disclose or suggest at least the limitation of

“in response to a communication session associated with said one or more of said first access device, said first access point and/or said first switch, allocating at least a portion of said reserved bandwidth for use by said one or more of said first access device, said first access point and/or said first switch,” as recited by the Applicant in independent claim 29.

The Office Action states the following:

With respect to claims 29, 32, 37, 40, 48 and 45, Miyagi teaches a method for bandwidth management and sharing in a hybrid wired/wireless local area network (e.g. the Fig. 1 shows the network management), the method comprising:

reserving bandwidth for one or more of a first access device, a first access point and/or a first switch (e.g. the bandwidth reserve for network equipment such as Fig. 6 A & B);

in response to a communication session associated with said one or more of said first access device, said first access point and/or said first switch, allocating at least a portion of said reserved bandwidth for use by said one or more of said first access device, said first access point and/or said first switch (e.g. the total bandwidth allocatable to PVCCs);

utilizing said at least a portion of said reserved bandwidth during said communication session (e.g. Fig. 7 shows the portion of bandwidth allocated to PVCCs);

(Office Action, p. 2-3). Putting aside for the moment whether or not the above is an accurate assessment of Miyagi, the Examiner has failed to provide “articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness” in the detailed manner described in *KSR*. Rather, the Examiner attempts to support the claim rejections as follows:

Miyagi explicitly teaches utilizing at least an unused remaining portion of said reserved bandwidth during at least a second communication session (e.g. col. 8, lines 45-50), therefore it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to understand that the remaining bandwidth is used for other PVCCs in the network.

See Office Action at pages 2-3. Initially, the Applicant points out that Miyagi relates to Asynchronous Transfer Mode (ATM) type of networks, which, by definition, are only wired networks. In this regard, Miyagi does not relate to a hybrid wired/wireless type of network. The Applicant submits that Miyagi has been overcome based on this reason alone, and all claims 29-53 are allowable.

Based on the above Office Action citation, it appears the Examiner has equated Applicant's "at least a portion" to Miyagi's bandwidth allocatable to PVCCs (ref. 402 in Fig. 6A). This argument is erroneous at least based on the following reasoning.

Firstly, referring to Fig. 6A, the bandwidth allocatable for the permanent virtual channel connection (PVCC) 402 and the switched virtual channel connection (SVCC) 403 is pre-fixed, i.e., it is divided and set prior to initiating any communication session (see Miyagi at col. 7, lines 22-26 and 62). In this regard, neither the PVCC bandwidth 402 nor the SVCC bandwidth 403 are allocated in response to a communication session (since they have fixed pre-allocation before a communication session is established).

Secondly, as mentioned above, the Examiner has equated Applicant's "at least a portion" to Miyagi's bandwidth allocatable to PVCCs (ref. 402 in Fig. 6A). However, ref.

402 is the allocatable (not allocated) PVCC bandwidth. The PVCC bandwidth that is, in fact, allocated (ref. 515) is disclosed with regard to Fig. 7 (see Miyagi at Fig. 7 and col. 8, lines 6-51). Therefore, Miyagi does not disclose "utilizing said at least a portion of said reserved bandwidth during said communication session," since "at least a portion" is equated to the PVCC **allocatable** bandwidth, which is different from the bandwidth that is **allocated**.

Thirdly, the Examiner has equated Applicant's "at least an unused remaining portion of said reserved bandwidth" to Miyagi's "remaining bandwidth", or the PVCC bandwidth difference mentioned in col. 8, lines 45-51. The Examiner is urged to re-read the entire description of Fig. 7 (i.e., col. 8, lines 6-51). Referring to Fig. 7, what Miyagi refers to as "remaining bandwidth" is the difference between the total allocatable PVCC bandwidth (ref. 513, field 3) and the total allocated PVCC bandwidth (ref. 515, field 5). The connection admission control for PVC 151 then executes connection admission control commands relating to the controlling terminal 300 and the network equipment 200 based on the value of this "remaining bandwidth" (see Miyagi at col. 5, line 65 – col. 6, line 9; col. 8, lines 50-52). In this regard, Miyagi's "remaining bandwidth" is not an "unused remaining portion of said reserved bandwidth" and it is not used during at least a second communication session.

Accordingly, Miyagi does not render independent claim 29 unpatentable, and a *prima facie* case of obviousness has not been established. The Applicant submits that claim 29 is allowable. Independent claims 37 and 45 are similar in many respects to the

method disclosed in independent claim 29. Therefore, the Applicant submits that independent claims 37 and 45 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 29.

**B. Rejection of Dependent Claims 30-36, 38-44 and 46-53**

Based on at least the foregoing, the Applicant believes the rejection of independent claims 29, 37 and 45 under 35 U.S.C. § 103(a) as being unpatentable over Miyagi has been overcome and requests that the rejection be withdrawn. Additionally, claims 30-36, 38-44 and 46-53 depend from independent claims 29, 37 and 45, respectively, and are, consequently, also respectfully submitted to be allowable based on the above arguments.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 30-36, 38-44 and 46-53.

In general, the Office Action makes various statements regarding claims 29-53 and the cited references, which statements are now moot in light of the above. Thus, the Applicant will not address such statements at the present time. However, the Applicant expressly reserves the right to challenge such statements in the future should the need arise (e.g., if such statement should become relevant by appearing in a rejection of any current or future claim).

**CONCLUSION**

Based on at least the foregoing, the Applicant believes that all claims 29-53 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8176.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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